BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SERGIO N. OROZCO	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,006,523
CESSNA AIRCRAFT COMPANY	)	
Respondent	)	
Self-Insured	)	
	)	

ORDER

Claimant appealed the preliminary hearing Order dated November 22, 2002, entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

ISSUES

Judge Barnes denied claimant's request for preliminary hearing benefits, holding claimant suffered an intervening accident and injury. The issue for Appeals Board (Board) review is whether claimant's present need for medical treatment is the result of an accidental injury that arose out of and in the course of his employment with respondent. Contrary to respondent's assertion, this issue is considered jurisdictional and, therefore, is reviewable by the Board on an appeal from a preliminary hearing Order. [1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds the ALJ's preliminary hearing Order should be reversed.

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[1] *See* K.S.A. 44-534a(a)(2).

On or about June 26, 2002, claimant injured his right wrist at work. [2] Respondent provided authorized medical treatment with the company physician, Dr. Jeanne Barcelo. Claimant was released to return to work without restrictions on July 9, 2002, and on July 22, 2002 claimant was released from authorized treatment. Claimant testified that although he felt better, he still had a constant problem with twisting motions of his wrist for which he would compensate by using his left hand, or by asking for assistance from co-workers.

On August 13, 2002, claimant's wrist pain worsened while working out at the YMCA. Claimant went to his personal physician, Dr. Barclay who referred him back to respondent's health services for treatment under workers compensation. Dr. Barclay described the August 13, 2002 incident as a wrist strain and not a re-injury but "a result of the original injury." [3]

Claimant returned to respondent's health services on August 16, 2002. Based upon his history of increased right wrist pain after lifting weights in the gym, respondent determined this was a significant intervening injury and denied any further treatment under workers compensation. This determination does not appear to have been based upon any opinion by Dr. Barcelo, at least none appears in the record. Accordingly, the only medical opinions are those of Dr. Barclay and Dr. Gluck, both of whom relate claimant's condition to his original work-related injury.

After additional medical treatment had been denied by respondent, Dr. Barclay referred claimant to orthopedic surgeon James L. Gluck, M.D., who examined the claimant on August 22, 2002. The history given Dr. Gluck included a description of the June 26, 2002 injury at work and the claimant's return to work on July 9, 2002, without restrictions. Claimant stated that thereafter he continued to have some discomfort in his wrist but was able to continue working. "He then had a re-injury 08/13/02 when he was lifting weights. He had increased pain in the wrist and that has persisted. Presently, he is working with the restriction of no use of vibratory tools. He denies injury elsewhere." [4] Dr. Gluck's impression was "two months status post right wrist injury with possible TFCC [triangular fibrocartilage complex] tear and 9 days status post injury exacerbation." [5] A diagnostic arthroscopy was recommended and if a peripheral TFCC tear was present, it would be

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[2] P.H. Trans. at 21; Resp. Ex. 1.

[3] P.H. Trans., Cl. Ex. 1.

[4] P.H. Trans., Cl. Ex. 2.

[5] P.H. Trans., Cl. Ex. 2.

surgically repaired. Dr. Gluck recommended claimant work with a wrist strap and avoid repetitive twisting, pulling with his right hand, and no lifting more than ten pounds. Based upon the history he was given and without the benefit of outside records, Dr. Gluck opined, ". . . within a reasonable degree of medical certainty that the causation of [claimant's] right wrist is the injury of 06/28/02 which occurred at work and therefore this should be covered by Workers' Compensation. He did have the re-injury lifting weights, however, it does not appear that that would have resulted in the significant symptomatology but/for the previous injury." [6]

Because respondent continued to deny additional medical treatment under workers compensation, claimant returned on his own to Dr. Gluck's care and underwent surgery on October 7, 2002, for a right wrist peripheral TFCC tear and a partial radial carpal ligament tear with synovitis.

When an accidental injury is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury. [7] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause. [8]

The Board finds that claimant's weight lifting incident may have temporarily worsened his symptoms, but claimant's present need for medical treatment is due to the original work-related injury.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim. [9]

WHEREFORE, the Appeals Board reverses the Order dated November 22, 2002, entered by Administrative Law Judge Nelsonna Potts Barnes, and remands this matter to the Administrative Law Judge for further orders consistent herewith.

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[6] P.H. Trans., Cl. Ex. 2.

[7] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[8] *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997); *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P.2d 697 (1973).

[9] K.S.A. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this _____day of February 2003.

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BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Director, Workers Compensation Director